

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C. 20554

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JUN 30 2005

Federal Communications Commission
Office of Secretary

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations)

(Arlington, The Dalles, Moro, Fossil, Astoria,)

Gladstone, Tillamook, Springfield-Eugene,)

Coos Bay, Manzanita and Hermiston, Oregon)

and Covington, Trout Lake, Shoreline, Bellingham,)

Forks, Hoquiam, Aberdeen, Walla Walla, Kent,)

College Place, Long Beach and Ilwaco, Washington))

MB Docket No. 02-136

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To: Office of the Secretary
Attention: Chief, Media Bureau

RESPONSE TO SUPPLEMENT

Triple Bogey, LLC; MCC Radio, LLC, and KDUX Acquisition, LLC (collectively "Triple Bogey") herein respond to the Supplement filed June 16, 2005, by Mid-Columbia Broadcasting, Inc. ("Mid-Columbia"), licensee of Station KMCQ(FM), The Dalles, Oregon, and First Broadcasting Investment Partners, LLC ("First Broadcasting") (collectively "Joint Petitioners").

Through their Supplement, the Joint Petitioners report that the Commission has issued a construction permit for a new FM station at Condon, Oregon, to operate on Channel 228C1. The Joint Petitioners assert that the Condon station would cover all of the unserved area (*i.e.*, "white area") that would be created by the proposed relocation of KMCQ (FM) from The Dalles to

Covington, Washington, which is near Seattle. The Joint Petitioners assert this development renders moot Triple Bogey's long-standing argument that the creation of a real-world unserved area through relocation of KMCQ would be contrary to the public interest. As Triple Bogey pointed out in its December 1, 2004, Supplement, its argument is bolstered by the ruling in *Sells, Arizona*, 19 FCC Rcd 22,459 (Assistant Chief, Audio Div. 2004), *petition for recon. pending*. In *Sells*, the Commission held that a vacant "back fill" allotment cannot be used to cover unserved or underserved areas created through modification of an existing station's allotment.

Through its June 16 Supplement, the Joint Petitioners argue that the award of the Condon construction permit renders Triple Bogey's arguments moot. That is simply not the case. The Condon station is not yet constructed and there is no assurance that it ever will be built. To once again quote *Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094 (1990): "[R]eplacement of an operating station with a vacant allotment or *unconstructed permit*, although a factor to be considered . . . , does not adequately cure the disruption to 'existing service' occasioned by the removal of an operating station. From the public's perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply by turning on a TV or radio set." *Id.* at ¶ 19 (emphasis added). The bedrock principle remains that the public has a legitimate expectation that existing service will continue and that curtailment of existing service is not in the public interest. *E.g., Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956); *KTVO, Inc.*, 57 RR 2d 648 (1984).

Triple Bogey notes that Ronald Unkefer is the sole manager and member of NT Radio, LLC. See BNPB-20041214AFN (construction permit application for Channel 228C1 at Condon, Oregon). Mr. Unkefer is also controlling principal of First Broadcasting. Clearly, by acquiring the Condon

construction permit, First Broadcasting and Mr. Unkefer seek to clear the way for relocation of KMCQ. But simply acquiring a construction permit is not sufficient. The loss of *any* radio service to approximately 1800 people as a result of the proposed KMCQ relocation¹ would not be cured by the mere existence of the Condon construction permit, particularly in light of the fact that construction permit is conditioned on the final outcome of no less than four FM allotment proceedings, MB Docket Nos. 05-8, 05-9, 05-10 and 00-87.² The final outcome in any one of those proceedings may require NT Radio to change frequency, class or site location. Thus, it is far from certain the Condon station, if and when it is constructed, actually will cover the white-area that relocation of KMCQ would create.

¹ See Triple Bogey Reply Comment, filed March 25, 2003, Exhibit A (Engineering Statement of Hatfield & Dawson), at pp. 5-6.

² A copy of the Condon construction permit is included as Exhibit 1 of the Joint Petitioners' Supplement.

In sum, contrary to Joint Petitioners' assertion in their Supplement, the award of the Condon construction permit does not render moot Triple Bogey's argument that the proposed relocation of KMCQ is contrary to the public interest.

**TRIPLE BOGEY, LLC, MCC RADIO, LLC,
and KDUX ACQUISITION, LLC**

By: 

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June 30, 2005

CERTIFICATE OF SERVICE

I, Matthew H. McCormick, do hereby certify that I have on this 30th day of June, 2005, caused to be hand delivered or mailed via First Class Mail, postage prepaid, copies of the foregoing RESPONSE TO SUPPLEMENT to the following:

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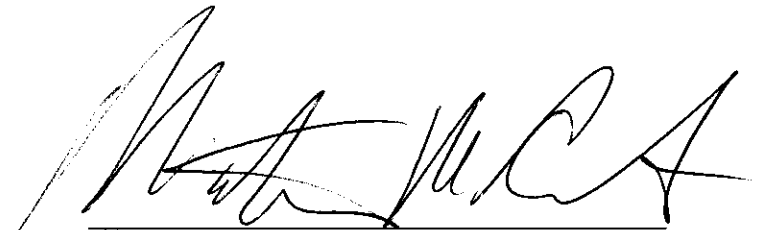
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A handwritten signature in black ink, appearing to read 'Matthew H. McCormick', written over a horizontal line.

Matthew H. McCormick

* Hand Delivered